



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

AUG 11 2005

Marc E. Elias, Esq.  
Perkins Coie  
607 Fourteenth St., N.W.  
Washington, D.C. 20005-2011

RE: MUR 5421  
John Kerry for President, Inc. and Robert  
Farmer in his official capacity as treasurer

On March 9, 2004, the Federal Election Commission notified your clients, John Kerry for President, Inc. and Robert Farmer, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint and publicly-available information, the Commission, on June 23, 2005 found that there is reason to believe John Kerry for President, Inc. and Robert Farmer, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441b, provisions of the Act, and 11 C.F.R. § 104.3(d)(4), a provision of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

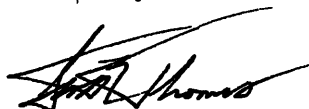
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott E. Thomas", written over a horizontal line.

Scott E. Thomas  
Chairman

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** John Kerry for President, Inc. and Robert  
Farmer, in his official capacity as treasurer

**MUR: 5421**

**I. I. GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission by Thomas J. Fitton, President of Judicial Watch, Inc. *See* 2 U.S.C. §§ 437g(a)(1). It concerns bank loans obtained by 2004 Democratic presidential candidate Senator John Kerry in December 2003, most of the proceeds of which he in turn loaned to his presidential primary committee, John Kerry for President, Inc. ("the Committee").

The complainant alleges that the Committee may have accepted an unreported and excessive contribution "to the extent that [Mrs. Teresa Heinz Kerry's] property rights in the Kerry family home or any other jointly-held property are pledged as collateral for any or all of the secured loans received by the Committee."

As discussed below, publicly available property records raise the possibility that a senior lien on collateral property securing a \$6.4 million loan Senator Kerry obtained in connection with his campaign may have caused his share of the collateral property to be less than the amount of the loan, resulting in the Committee's acceptance of a possible excessive contribution from Mrs. Heinz Kerry. Moreover, the available information discussed below also raises a question as to whether Mellon Trust of New England, N.A. ("Mellon Trust") made the \$6.4 million loan to Senator Kerry in the ordinary course of business, triggering a possible violation of 2 U.S.C. § 441b by the Committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

On December 18, 2003, Senator John Kerry announced that he was loaning \$850,000 to his presidential primary campaign and seeking a mortgage on his personal residence to obtain additional campaign funds. Thomas B. Edsall, *Kerry Mortgages Home to Keep Campaign Afloat; Fundraising Falling Short for Presidential Hopeful as Primaries Demand Increased Spending*, The Washington Post, December 19, 2003, available at 2003 WL 67894691. At the time, Senator Kerry was facing strong opposition in the first two Democratic primaries -- the January 19, 2004 Iowa caucuses and the January 27, 2004 New Hampshire primary -- and was reportedly running low on funds to meet the increased staff, travel, and advertising demands leading up to them. *Id.*; Sharon Theimer, *Kerry Taps His Own Fortune*, The Deseret News, December 19, 2003 at A10, available at LEXIS, News & Business Database; and Patrick Healy, *Kerry Mortgage to Help Fund Race*, The Boston Globe, December 19, 2003 at A1, available at 2003 WL 66483547.

The Committee's disclosure reports reflect that Senator Kerry in fact loaned his campaign \$1.1 million in the form of proceeds from a series of three "smaller" loans between December 12 and December 19, 2003 as he was seeking a larger mortgage loan on his personal residence. According to the Schedule C-1s contained in the Committee's 2003 Year End Report, as amended, the loans comprising the \$1.1 million derived from lines of credit at two banks, Mellon Bank, N.A and Citizen's Bank. The Mellon Bank loans, \$500,000 received on December 12, 2003 and \$250,000 received on December 19, 2003, were reported as draws from an unsecured credit line. The third loan, \$350,000 received on December 15, 2003, was reported as a draw on

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1 a home equity line of credit from Citizen's Bank that was secured by the Senator's residence, a  
2 town home located in the Beacon Hill area of Boston. The property owners of record for the  
3 residence are Linda K. Smith and Mellon Bank, N.A., Trustees of the T & J Louisburg Square  
4 Nominee Trust. Senator Kerry and Mrs. Heinz Kerry are the beneficiaries of the trust as tenants  
5 by the entireties.

6 Senator Kerry soon obtained the fourth and larger loan he was seeking from Mellon Trust  
7 of New England, N.A. ("Mellon Trust"), a \$6.4 million loan secured by another mortgage on the  
8 Boston town home residence (alternatively referred to as "the collateral property") on  
9 December 19, 2003. On or about December 23, 2003, he officially announced that he borrowed  
10 those funds to lend to his campaign. Thomas B. Edsall, *Kerry Lends Campaign \$6.4 Million;*  
11 *House Mortgaged as Funds Dwindle*, The Washington Post, A Section, December 24, 2003,  
12 *available at* 2003 WL 67895772. According to the Committee's disclosure reports, Senator  
13 Kerry used the proceeds of the \$6.4 million loan to pay off the previous three credit-line draws,  
14 apparently including costs or interest on one or more of the loans, and loaned the Committee  
15 \$1,787,965.80 on December 24, 2003.<sup>1</sup> On January 5, 2004, he loaned the Committee an  
16 additional \$3.4 million from the proceeds of the mortgage loan. Finally, on January 14, 2004, he  
17 loaned the Committee \$100,000, the source of which was reported as the Senator's personal

<sup>1</sup> As discussed in Section II.B, the Committee's Schedule C-1s show the \$6.4 million loan as two separate loans received on two separate dates. In the 2003 Year End Report, as amended, Schedule C-1 shows a loan from Mellon Trust in the amount of \$2,904,870.35 received on December 24, 2003. Schedule A shows that Senator Kerry loaned the Committee \$1,787,985.80 on that date, and the Schedule C-1s for each of the earlier credit line draws state that these draws were "repaid through proceeds of 12/24/03 loan." Thus, the \$2,904,870 loan amount reported in the Schedule C-1 appears to consist of the \$1,787,985.80 loaned to the Committee and the repayment of the outstanding \$1,100,000 in credit line draws, leaving \$16,884.55 unaccounted for. That amount may be loan costs or interest owed on the credit line draws. Schedule C-1 contained in the 2004 February Report shows a \$3.4 million loan from Mellon Trust dated January 5, 2004. In contrast to the reporting, the mortgage document references a promissory note, dated December 19, 2004, in the amount of \$6.4 million.

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1 funds. All told, as of January 14, 2004, Senator Kerry had loaned his Committee a total of  
2 \$6,387,985.80, \$6,287,965 of which he obtained through a bank loan and credit line draws.

3 The loan note and any related loan documents have not been provided, but the publicly  
4 available Mortgage and the Adjustable Rate Rider appended to it show that the \$6.4 million loan  
5 provided for a 3.125% variable interest rate, periodic payments and a due date of January 1,  
6 2034. News reports also indicated that the loan provided for interest-only payments for the first  
7 ten years of the loan, a fact that appears to be supported by the Committee's monthly payments of  
8 \$16,666.67 to "Mellon Private Mortgage" beginning in February 2004 for "loan interest" and by  
9 language in the Rider.<sup>2</sup>

10 On July 21, 2004, the Committee repaid the loans Senator Kerry had made to it, including  
11 interest and costs.<sup>3</sup>

12 **B. The Committee's Acceptance of a Possible Excessive Contribution**

13 Complainant asserts that the value of Senator Kerry's interest in the jointly-owned  
14 collateral property is "at best" \$3.3 million based on a Boston Herald article that noted the City  
15 of Boston Assessing Department had assessed the property for tax purposes at \$6.6 million as of  
16 January 3, 2003. Accordingly, the Complainant maintains that the Committee accepted and

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<sup>2</sup> The Washington Post article that reported the interest-only terms of the \$6.4 million loan stated that the Mortgage Bankers Association had calculated the monthly interest payments at a 3.125% rate to be \$16,667, precisely what the Committee began reporting as payments for loan interest in February 2004. *See* Thomas B. Edsall, *Kerry Lends Campaign \$6.4 Million; House Mortgaged as Funds Dwindle*, The Washington Post, December 24, 2003 at LEXIS, News & Business Database. A provision of the Rider governing how and when the adjustable interest rate would be calculated appears to refer to interest-only payments. It states in pertinent part: "During the first 120 months of this loan, the Note Holder will determine the amount of my new monthly payment that will be sufficient to pay the monthly interest charges on my loan at my new interest rate. Beginning . . . on January 1, 2014, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay the unpaid principal in full on the Maturity Date at my new interest rate in substantially equal payments."

<sup>3</sup> The Committee properly repaid the loans to Senator Kerry prior to July 28, 2004, the date he accepted the Democratic presidential nomination, in accordance with 2 U.S.C. § 441a(j) and 11 C.F.R. § 116.11.

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1 Teresa Heinz Kerry made an unreported and excessive contribution "to the extent that" Mrs.  
2 Heinz Kerry's property rights in the collateral property or other jointly-held property pledged as  
3 collateral for secured loans received by the Committee exceeds \$2,000, the 2004 limit on  
4 contributions by individuals to authorized committees.

5 In response, the Committee states that the appropriate measure of the collateral property's  
6 fair market value is its appraised value and appends to its response an Appraisal Report prepared  
7 for Mellon Trust that estimates the fair market value of the property as \$12.8 million as of  
8 November 14, 2003. The Committee maintains that the \$6.4 million mortgage placed on the  
9 collateral property to secure the loan represents "Senator Kerry's share of the market value" of  
10 the property. Presumably then, the Committee disputes that it accepted an excessive contribution  
11 from Mrs. Heinz Kerry since it maintains that Senator Kerry's interest in the collateral property is  
12 equal to the \$6.4 million loan amount.<sup>4</sup>

13 Because he declined to accept public financing, Senator Kerry was permitted to use  
14 unlimited personal funds for his presidential primary campaign, including funds derived from  
15 assets owned jointly with his spouse. *See* 11 C.F.R. § 110.10 and 2 U.S.C. § 431(26). He was  
16 also permitted to obtain a bank loan secured by property jointly-owned with Mrs. Heinz Kerry  
17 without a contribution resulting from her so long as his share of the property is equal to or  
18 exceeds the amount of the loan that is used for the campaign. *See* 11 C.F.R. § 100.52(b)(4). *See*  
19 *also* 11 C.F.R. § 100.33(a) and (c). As the candidate's spouse, Mrs. Heinz Kerry was subject to

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<sup>4</sup> The Committee only indirectly addresses what it views as the implicit legal allegations of the complaint. In the main, it asks that the Commission dismiss the complaint, calling it speculative, citing its failure to cite to particular statutory or regulatory provision allegedly violated, and asserting that the Appraisal Report sufficiently refutes the factual allegations in the complaint.

1 the same \$2,000 contribution limit in connection with the primary election as any other  
2 individual and reached that limit when she made a \$2,000 contribution on December 31, 2003.  
3 The central question then is whether Senator Kerry's share of the jointly-owned residence was  
4 equal to or greater than the \$6.4 million loan amount.

5 **The Fair Market Value of the Collateral Property**

6 The Appraisal Report submitted by the Committee was prepared for Mellon Trust by a  
7 certified appraiser with the intention that it be used "only for collateral analysis and/or portfolio  
8 management." Appraisal Report cover letter dated December 16, 2003. The appraisal estimated  
9 the market value of the collateral property as \$12.8 million as of November 14, 2003, the date the  
10 property was inspected by the appraiser. As noted by the Committee, the Commission has  
11 acknowledged that an appraisal by an expert using an acceptable appraisal method is prima facie  
12 evidence of a property's "usual and normal" market price, a regulatory term it has equated with  
13 the term "fair market value." See Advisory Opinion Advisory 1984-60. Indeed, as a national  
14 bank, Mellon Trust appears to have been required to obtain an appraisal performed by a state  
15 certified appraiser. See 12 C.F.R. § 34.43 (requiring an appraisal to be performed by a State  
16 certified or licensed appraiser except for certain enumerated transactions none of which appear to  
17 be at issue here).

18 Based on our review of the appraisal, we conclude that the appraisal was prepared by an  
19 expert using an acceptable appraisal method and thus constitutes prima facie evidence of the fair  
20 market value of the collateral property. The appraiser who valued the property and prepared the  
21 report appears to have been well-qualified: he is vice president and Director of Valuation and  
22 Consulting Services at a century-old Boston real estate firm; he has been state-certified since

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1 1992 and is certified as a general real estate appraiser, a category of appraiser requiring the most  
2 extensive education and experience; he has extensive experience in valuing properties in  
3 connection with sales, financing acquisition and property tax disputes, including numerous “high  
4 end” residential properties; and he holds an MAI designation from the Appraisal Institute, a  
5 voluntary professional association that issues this designation to members experienced in  
6 commercial, industrial and residential real estate valuation who have met fairly rigorous  
7 education and experience requirements, including comprehensive examinations beyond those  
8 required for state certification. *See* Appraisal Report at 9 and 12 and the Appendix (addressing  
9 the appraiser’s qualifications), 264 Mass. Regs. Code tit. 264 § 5.0 (listing licensure and  
10 certification requirements) and [www.appraisalinstitute.org/about/designations.asp](http://www.appraisalinstitute.org/about/designations.asp) (concerning  
11 MAI requirements). Moreover, the appraiser conducted the appraisal using a sales comparison  
12 approach and prepared his report in accordance with the rules of the Uniform Standards of  
13 Professional Appraisal Practice (“USPAP”), professional ethics and practice standards that have  
14 been adopted by the Massachusetts Board of Registration of Real Estate Appraisers.<sup>5</sup> Mass.  
15 Regs. Code tit. 264, § 11.0 (2005) and Appraisal Report at 4.

16 The fact that the assessed value of the property for property tax purposes diverges from  
17 the market value determined by the appraisal is not enough by itself to rebut the prima facie  
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<sup>5</sup> The comparables used by the appraiser include condominiums and property sales dating back three years from the date of the valuation, which at first blush raise concerns about whether these are truly comparable to the collateral property, a townhouse. However, the inclusion of larger condominiums and earlier sales appears to result from the appraiser’s determination that the comparable market is the high-end luxury market in Boston’s Back Bay and Beacon Hill neighborhoods, a relatively small geographic area, a judgment that appears to be reasonable.

1 showing that the fair market value of the collateral property as of November 2003 was \$12.8  
2 million. Differences between the appraised and assessed values of property are not uncommon.  
3 One news article published just before the complaint was filed noted that a smaller townhouse in  
4 the area sold for \$8.55 million in January 2004 and a home on the same street that was being  
5 gutted sold for \$5.5 million in late 2003. *See* Glenn Johnson, *Campaign 2004/Kerry Loan*; 3  
6 *Boston Brokers See a Fair Appraisal*, The Boston Globe, February 24, 2004 at A20, *available at*  
7 LEXIS, News & Business Database. Those sales figures are, respectively, 69% and 24% more  
8 than the 2004 assessed values of those properties. *See also* Thomas Keane, Jr., *Tax Break Hits*  
9 *Close to all Boston Homes* (op-ed), The Boston Herald, March 3, 20004 *available at* LEXIS,  
10 News & Business database (based on the author's random sample of 40 residential sales in  
11 Boston since January 2004, on average, the sales price exceeded the assessed value by 37%).  
12 Although the disparity between the appraised value and assessed value of the collateral property  
13 is larger than those examples, three real estate brokers consulted in connection with the appraisal  
14 opined that the Kerry residence would sell for between \$13 million and \$15 million. Appraisal  
15 Report at 64. *See also* Glenn Johnson, *Campaign 2004* (three high-end Boston real estate  
16 brokers said the appraised value of the collateral property set an aggressive but not unreasonable  
17 value).

18         Given the generally persuasive nature of the Appraisal Report, the preponderance of the  
19 currently available information supports relying upon the Appraisal Report as establishing the  
20 fair market value of the collateral property as \$12.8 million.

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**Senator Kerry's Share of the Collateral Property**

In light of the \$12.8 million appraised value of the residence, up to 50% of the value of the property, \$6.4 million, was available for Senator Kerry to use as collateral for a campaign loan based on the representation that he and Mrs. Heinz Kerry are joint beneficial owners of the property as tenants by the entirety. *See* 11 C.F.R. § 100.33(c) (personal funds of a candidate include one-half the value of property jointly-owned with a spouse unless the instrument of conveyance reflects otherwise). *See also* Advisory Opinion 1991-10 (permitting a candidate who held property in Massachusetts as tenants by the entirety to consider one half of the equity in the property as his personal funds).<sup>6</sup>

Even though Senator Kerry's interest in the property on its face is equal to the loan amount, a review of publicly available mortgage documents raises the possibility that there may have been a senior lien on the property when he obtained the Mellon Trust loan. The appraisal transmittal letter calls special attention to the "Additional Assumptions and Limiting Conditions" which reads, "I have not considered the effect upon value of any mortgage on the subject property." On-line searches of the Suffolk County Registry of Deeds database reflected two other senior liens on the residence that had not been discharged as of the appraisal valuation date. The first lien was an October 1996 mortgage in favor of Citizen's Bank. A discharge of that \$820,000 mortgage was filed on December 23, 2003 although it is dated December 12, 2003. The second lien is an August 23, 1999 open-end mortgage in favor of Citizen's Bank that secures

<sup>6</sup> The Committee's response indicates that Senator Kerry's share of the property is 50% in stating that the \$6.4 million mortgage represents Senator Kerry's share of the appraised value of the collateral property. It is unclear at this point whether that conclusion is based on Senator Kerry's share of the beneficial interest under the Trust or whether it is a legal conclusion based on the joint ownership of the property as tenants by the entirety.

1 a \$450,000 home equity credit line issued to Senator Kerry. This mortgage may have secured the  
2 \$350,000 credit line draw reported as one of the earlier December loans Senator Kerry made to  
3 his Committee. *See supra*, pp. 2-3. A search of the Suffolk County database revealed a  
4 discharge of the open-ended mortgage dated January 13, 2004 that was not filed until April 20,  
5 2005.

6 The Citizen's Bank mortgage lien raises a concern as to whether Senator Kerry  
7 encumbered the collateral property in an amount greater than the \$6.4 million appraised value of  
8 his share of the property. According to the December 19, 2003 mortgage document, the Mellon  
9 Trust loan was dated December 19, 2003, which suggests that Senator Kerry received one  
10 loan of \$6.4 million on that date. However, the Schedule C-1s filed by the Committee report the  
11 Mellon Trust Loan as two loans totaling \$6,304,870: 1) a \$2,904,870.35 loan on December 24,  
12 2003 for which part of the proceeds were used to pay off the three smaller loans Senator Kerry  
13 made to the Committee earlier in December, including the \$350,000 credit draw on a Citizen's  
14 Bank home equity credit line that was apparently secured by the collateral property, and 2) a \$3.4  
15 million loan on January 5, 2004. If Senator Kerry obtained a single loan of \$6.4 million as  
16 recited in the mortgage and used part of the proceeds on or soon after December 24, 2003 to pay  
17 off an earlier loan secured by the same property, then his unencumbered equity in the collateral  
18 property was less than \$6.4 million when he received the Mellon Trust loan on December 19,  
19 thereby triggering a possible excessive contribution by Mrs. Heinz Kerry, the beneficial co-owner  
20 of the property, for a short duration.<sup>7</sup> Moreover, any prior outstanding or subsequent draws

<sup>7</sup> If Senator Kerry received the \$6.4 million Mellon Trust loan as two loans on the dates reported in the Schedule C-1s, then he may not have encumbered his share of the property for more than \$6.4 million at any one time.

1 against the Citizen's Bank home equity credit line would have also resulted in a senior lien  
2 affecting the value of Senator Kerry's equity in the collateral property since, under the terms of  
3 an open-end mortgage, future advances are secured by that mortgage and have the same priority  
4 as if the advance was made on the date the open-end mortgage was recorded. *See* Mass. Gen.  
5 Laws ch. 183, § 28B.

6 The existence of a senior lien securing the collateral property raises the possibility that  
7 Senator Kerry's interest in the collateral property was less than the amount of the \$6.4 million  
8 Mellon Trust loan resulting in the Committee's acceptance of a possible excessive contribution  
9 by Teresa Heinz Kerry. Therefore, there is reason to believe that the Committee and Robert  
10 Farmer, in his official capacity as treasurer, may have accepted an unreported excessive  
11 contribution in violation of 2 U.S.C. §§ 441a(f) and 434(b).

12 **C. Possible Prohibited Contribution**  
13

14 The Committee's reports and publicly available property records also raise an issue as to  
15 whether the Mellon Trust N.A., a national bank, made the \$6.4 million bank loan to Kerry within  
16 the ordinary course of business. If not, the Committee may have violated 2 U.S.C. § 441b since  
17 national banks are prohibited from making contributions in connection with election to any  
18 political office and political committees are prohibited from accepting them. *See* 2 U.S.C.  
19 § 441b.

20 The Act exempts from the definition of contribution bank loans made in accordance with  
21 applicable law and in the ordinary course of business. 2 U.S.C. § 431(8)(B)(vii). A loan is  
22 deemed to be made in the ordinary course of business when it meets the following conditions:

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1) it bears the usual and customary interest rate of the lending institution for the category of loan involved; 2) it is made on a basis that assures repayment; 3) it is evidenced by a written instrument; and 4) it is subject to a due date or amortization schedule. 11 C.F.R. § 100.82(a).

Issues of particular concern are whether the Mellon Trust loan was made on a basis that assures repayment and whether it bears the usual and customary interest rate. Commission regulations provide that a loan is made on a basis that assures repayment if the lending institution making the loan has a perfected security interest in collateral owned by the candidate receiving the loan, the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan, and the candidate provides documentation of the perfected security interest. 11 C.F.R. § 100.82(e)(1)(i).

The Committee's reports and the aforementioned public property records raise a question as to whether the value of the collateral was equal to or greater than the loan amount and any senior liens on the date of the loan. Whether the value of the collateral property was sufficient depends on whether the collateral was the entire residence or only Senator Kerry's share of the property. Assuming that the collateral for the loan was the entire residence, the \$12.8 million fair market value of the residence as estimated by the appraisal greatly exceeded the amount of Mellon Trust's loan, even in light of a possible senior lien arising from the \$450,000 Citizen's Bank home equity credit line. However, the value of the collateral securing the Mellon Trust loan is reported on Schedule C-1 of the 2003 Year End Report, as amended, as \$6.4 million raising the possibility that the collateral securing the loan may be limited to Senator Kerry's interest in the property. If the bank's collateral was somehow limited in the underlying loan

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1 documents, then the fair market value of the bank's collateral appears to have been less than the  
2 amount of the loan and the senior lien on the date of the Mellon Trust loan.

3 A second concern is that available information does not permit us to determine  
4 conclusively that the \$6.4 million loan bore Mellon Trust's usual and customary rate of interest  
5 for this type of loan. The 3.125% variable interest rate coupled with the apparent 10-year  
6 interest-only payment requirement appears to be favorable when compared to the interest rates on  
7 the earlier December loans Senator Kerry made to the Committee that originated from draws on  
8 lines of credit at Mellon Bank and Citizen's Bank. The \$500,000 and \$250,000 draws on the  
9 Mellon Bank credit line bore a 5.5% variable interest rate and the \$350,000 draw on the Citizen's  
10 Bank credit line bore a 3.5% variable interest rate. The interest rate and interest-only terms may  
11 well be usual and customary for the level and type of loan made by Mellon Trust to Senator  
12 Kerry. Given the other information needed concerning the Mellon Trust loan as discussed above,  
13 the Commission will seek information about whether the interest rate and terms were customary  
14 for this type of loan.

15 Based on the foregoing, there is reason to believe that the Committee and Robert Farmer,  
16 in his official capacity as treasurer, violated 2 U.S.C. § 441b.

17 **D. Reporting Violations Relating to the Mellon Trust Loan**  
18

19 The Committee also apparently misreported on Schedule C-1 the date the Mellon Trust  
20 Loan was incurred. In addition, the circumstances under which the loan was obtained raise  
21 questions as to whether the Committee's receipt of the loan proceeds was properly reported.

22 Based on public news reports, Senator Kerry obtained the loan for use in connection with  
23 his campaign. *See e.g., Thomas B. Edsall, Kerry Lends Campaign \$6.4 million, supra* (stating

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1 that Kerry announced he obtained a \$6.4 million loan to lend his campaign money); Patrick  
2 Healy, *Kerry Mortgage to Help Fund Race, supra* (stating that the candidate was seeking a  
3 mortgage on his home for campaign expenses). A candidate who receives a loan for use in  
4 connection with his campaign receives it as an agent of his authorized committee. 2 U.S.C.  
5 § 432(e)(2).

6 As noted earlier, the Mellon Trust mortgage indicates that the underlying loan was dated  
7 December 19, 2003. The Schedule C-1s contained in the Committee's reports, however, report  
8 the loan as if it were two separate loans received on two different dates as discussed in Section  
9 II.B of this document. It may be that Senator Kerry received the loan proceeds in installments,  
10 received two loans rather than one, or that he intended to use only some of the proceeds of the  
11 loan to finance his campaign. If not, and the entire loan was indeed obtained for use in  
12 connection with his campaign as the campaign publicly announced, then the Senator received the  
13 funds as an agent of the Committee and receipt of the entire loan amount should have been  
14 reported at the time he received it, in the January 2003 Year End Report. *See* 2 U.S.C.  
15 § 432(e)(2); 11 C.F.R. §§ 101.2(a) and 102.8(a).

16 On the other hand, based on the Committee's reports, it appears that Senator Kerry may  
17 not have loaned his committee about \$95,130 of the loan proceeds, suggesting that the entire loan  
18 was not for use in connection with his election. In that case, it was appropriate for the  
19 Committee to report on Schedule C-1 the actual amount of the loan proceeds received in a  
20 particular reporting period rather than the total amount of the \$6.4 million loan. In either case,  
21 though, the Committee should have reported on Schedule C-1 the date the loan was incurred,  
22 December 19, 2003. *See* 11 C.F.R. § 104.3(d)(4) and instructions for FEC Form 3P at 13-14.

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1 Finally, if it turns out that the collateral for the \$6.4 million loan was the entire residence,  
2 then the Committee misreported on Schedule C-1 the value of the collateral as only Senator  
3 Kerry's share of the property. Moreover, Schedules C and C-1 do not reflect any co-endorser of  
4 the loan. A Trustee's Certificate filed with the Mellon Trust mortgage suggests that Mrs. Heinz  
5 Kerry may be considered a co-signatory on the loan. The certificate states that the trustee has the  
6 "complete authority to enter into a mortgage . . . encumbering the property . . ." and that "all the  
7 beneficiaries . . . have accordingly authorized and instructed" the trustee to execute the  
8 mortgage. If Mrs. Heinz Kerry can be considered a co-signer of the mortgage loan, then the  
9 Schedule C and C-1 should have reflected a co-endorser.

10 Based on the foregoing, there is reason to believe that the Committee and Robert Farmer,  
11 in his official capacity as treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4).

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